

jury trial in federal court are not illegal nor contrary to public policy. *Cooperative Finance Assoc. v. Garst*, 871 F. Supp. 1168, 1171 (N.D. Iowa 1995). The party seeking to enforce waiver must demonstrate the waiver was knowing and voluntary under the circumstances, by, for example, showing the waiver provision was clear and unambiguous. *Id.* at 1171-72.

Paragraph 24J of the Membership Agreements at issue in this case provides:

WAIVER OF JURY TRIAL. The parties waive their right to a jury trial in any action related to this Membership Agreement or any aspect of the relationship between the Member, ERA, any guarantor, and their respective successors and assigns.

See, e.g., Filing No. 1, Ex. A Membership Agreement p. 31 (bold in original). The Membership Agreements were signed by Gary T. Thompson on behalf of Realty Linc, Inc. **See *id.*** The plaintiff also shows Mr. Thompson is a professional real estate broker licensed in Nebraska and Iowa and the sole shareholder and officer of Realty Linc., Inc., and Thompson Investments, Inc. **See** Filing No. 40, Ex. A - Thompson Depo. p. 14, 21, 119. Based on the evidence before the court, the plaintiff has demonstrated the defendants Gary T. Thompson and Realty Linc., Inc. have knowingly and voluntarily waived their rights to a jury trial on the plaintiff's complaint.

Under the present circumstances, Thompson Investments, Inc. does not have a right to jury trial. In this action, the plaintiff filed suit against Thompson Investments, Inc. seeking to set aside fraudulent conveyances, as well as to restrain Thompson Investments, Inc. from transferring certain real estate. **See** Filing No. 1 - Complaint p. 20 Count VI. The plaintiff's claim against Thompson Investments, Inc. is an equitable claim seeking equitable remedies for the alleged fraudulent conveyances undertaken by Gary Thompson. **See** *Comcast v. Multi-Vision Elecs.*, 504 F. Supp. 2d 740, 747 (D. Neb. 2007) (noting that a creditor can "call upon the equitable powers of the court" when it seeks to set aside a transfer of property which defrauds a creditor); *Parker v. Parker*, 681 N.W.2d 735, 741 (Neb. 2004) (recognizing that an action based on Nebraska's Uniform Fraudulent Transfer Act is equitable in nature).

For the reasons stated above, the plaintiff's motion to strike the jury demand made by the defendants is granted. Upon consideration,

IT IS ORDERED:

The plaintiff's Motion to Strike Defendants' Jury Demand ([Filing No. 38](#)) is granted. The defendants' demand for trial by jury is stricken, any trial in this matter will proceed without a jury.

DATED this 23rd day of February, 2009.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge